

RECEIPT NUMBER

37921

10 pgs

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JUDGE : Edmunds, Nancy G.
DECK : S. Division Civil Deck
DATE : 07/14/2005 @ 12:07:26
CASE NUMBER : 2:05CV72769
CMP CARL BURGESS V. BASF CORP
(DA) SI

CARL BURGESS

Plaintiff,

-VS-

BASF CORPORATION

Defendant,

MAGISTRATE JUDGE MORGAN

HUIZENGA & HERGT, P.C.

By: John P. Hergt P31332

Attorneys for Plaintiff

1415 Penobscot Building

Detroit, MI 48226

(313) 963-4200

COMPLAINT AND JURY DEMAND

NOW COMES, the Plaintiff, Carl Burgess, by and through his attorneys, HUIZENGA & HERGT, P.C., and for his Complaint against the, Defendant, BASF Corporation states as follows:

GENERAL ALLEGATIONS

1. Plaintiff, Carl Burgess, resides in the City of Detroit, and is domiciled in and a citizen of the State of Michigan.

2. Defendant, BASF Corporation, is a corporation organized and existing under the laws of the State of Delaware having its principal place of business in the State of New Jersey or a State other than Michigan.
3. This Court's diversity of citizenship jurisdiction is invoked pursuant to 28 U.S.C.A. § 1332(a)(1) as the plaintiff and the defendant in this action are citizens of different states.
4. This is a civil action between citizens of different States where the matter in controversy exceeds the sum of \$75,000.00 exclusive of interest, and costs.
5. This Court's federal question jurisdiction is invoked pursuant to 28 U.S.C.A. § 1331 as Count I of this action arises out of the Family and Medical Leave Act ("FMLA") 29 U.S.C.A. § 2601 *et seq.*
6. Defendant is and was at all times materially relevant hereto an "Employer" as that term is defined in Section 2611(4)(A) of the FMLA.
7. Count II of this action is brought pursuant to the Elliott-Larsen Civil Rights Act ("ELCRA") M.C.L. 37. 2101 *et seq.*

COUNT I

8. For Count One of his Complaint plaintiff incorporates paragraphs one (1) through (7) of his complaint as though fully stated here.
9. Plaintiff commenced his employment with the Defendant in on or about December 5, 1977 as a Business Development Manager and was last employed by the defendant at its Livonia, Michigan office as a Technical Service Representative II.
10. One April 21, 2003 plaintiff was placed on Medical Leave by the defendant and on April 25, 2003 underwent double by-pass heart surgery which disabled him from his employment.
11. On July 21, 2003 plaintiff returned to work from his leave but was not returned to his position but placed in a newly created job, stripped of his accounts, and given insignificant assignments on an ad hoc basis, and his performance was unfairly criticized.
12. On November 11, 2003 plaintiff notified the defendant of a violation of the Family Medical Leave Act by contacting the defendant's Corporate Compliance Hot Line and complaining that he had not been placed back in his position or an equivalent position

and that his job performance had been unfairly criticized by his Supervisor, Steven Hicks, following his return from leave.

13. On November 20, 2003 plaintiff's supervisor, Steven Hicks, placed the plaintiff on a Performance Improvement Plan for a 90 day period and terminated his employment.

14. By reason of the acts herein alleged defendant in violation of his FMLA rights, and failed to reinstate him to his former position or an equivalent position in violation of the Family Medical Leave Act. 29 U.S.C.A. § 2601 *et seq.*

15. By reason of the acts herein alleged defendant retaliated against the plaintiff for exercising his rights under the FMLA and complaining that his rights had been violated as prohibited by the Family Medical Leave Act. 29 U.S.C.A. § 2601 *et seq.*

16. Defendant refused to return the plaintiff to an equivalent position, unfairly down graded his performance and terminated plaintiff's employment with knowledge of the requirements of the FMLA or in reckless indifference to those requirements.

17. As a direct and proximate result of the acts herein alleged plaintiff has sustained and will continue to sustain into the future wage and benefit losses and the loss of his employment.

WHEREFORE, the Plaintiff, Carl Burgess, requests this Court enter judgment in his favor and against the Defendant is such an amount in excess of Seventy Five Thousand Dollars (\$75,000.00) as he shall be found entitled to compensated him for his past, present, and future wage and benefits losses together with costs, interest, attorney fees and liquidated damages.

WHEREFORE, the Plaintiff further requests such other legal and equitable relief as is just and proper including but not limited to reinstatement if feasible.

COUNT TWO

18. For Count II of his complaint plaintiff incorporates paragraphs one (1) through seven (7) of the General Allegations and paragraph nine (9) of Count I as though fully stated here.
19. Plaintiff performed his duties as Technical Service Representative II in a manner that met his employers business expectations having received a performance evaluation rating his performance in March of 2003 as meeting expectations.
20. That following the plaintiff's placement on leave his primary account was given to a younger individual who was less qualified to perform the duties of the position than plaintiff who was born January 27, 1953 and was fifty years of age.

21. That following the plaintiff's termination he was replaced by a younger individual the defendant had sought to place in his position.

22. Plaintiff's age was a determining factor in the defendant's decision to remove plaintiff from his position and terminate his employment.

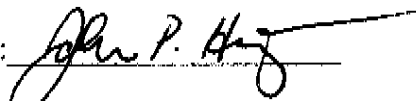
23. By reason of the acts herein alleged defendant discriminated against the plaintiff because of his age in violation of the Elliott-Larsen Civil Rights Act, M.C.L. 37.2101 *et seq.*

24. As a direct and proximate result of the acts herein alleged plaintiff has sustained and will continue to sustain into the future wage and benefit losses and has suffered emotional distress.

WHEREFORE, the Plaintiff, Carl Burgess, requests this Court enter judgment in his favor and against the Defendant is such an amount in excess of Seventy Five Thousand Dollars (\$75,000.00) as he shall be found entitled to compensated him for his past, present, and future wage and benefits losses, and the emotional distress he has suffered together with costs, interest, attorney fees.

WHEREFORE, the Plaintiff further requests such other legal and equitable relief as is just and proper including but not limited to reinstatement if feasible.

HUIZENGA & HERGT P.C.

By: 
John P. Hergt (P31332)

Dated: July 13, 2005

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JUDGE : Edmunds, Nancy G.
DECK : S. Division Civil Deck
DATE : 07/14/2005 @ 12:07:26
CASE NUMBER : 2:05CV72769
CMP CARL BURGESS V. BASF CORP
(DA) SI

CARL BURGESS

Plaintiff,

-VS-

BASF CORPORATION

Defendant,

MAGISTRATE JUDGE MORGAN

HUIZENGA & HERGT, P.C.
By: John P. Hergt P31332
Attorneys for Plaintiff
1415 Penobscot Building
Detroit, MI 48226
(313) 963-4200

JURY DEMAND

Plaintiff, Carl Burgess, through his attorneys Huizenga & Hergt P.C. hereby
demands a Trial by Jury of all his causes of action in this case.

HUIZENGA & HERGT P.C.

By: 

John P. Hergt (P31332)

Dated: July 13, 2005

JS 44 11/99

CIVIL COVER SHEET COUNTY IN WHICH THIS ACTION AROSE WAYNE

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September, 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

I. (a) PLAINTIFFS

CARL BURGESS

DEFENDANTS

BASF CORPORATION

05-72769

(b) County of Residence of First Listed

WAYNE

County of Residence of First Listed

WAYNE

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Attorneys (If Known)

John Hergt: Huizenga & Hergt P.C. 1415 Penobscot Bldg.
Detroit, Michigan 48226
(313) 963-4200

MAGISTRATE JUDGE MORGAN**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item 111)

- Citizen of This State ☒ 1 ☐ 2
- Citizen of Another ☐ 2 ☐ 3
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 4
- Incorporated or Principal Place of Business in This State ☐ 4 ☐ 5
- Incorporated and Principal of Business in Another State ☐ 5 ☒ 6
- Foreign Nation ☐ 6 ☐ 7

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment and Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel And Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21, 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Com. Mod. Invest. Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
		SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DWC/DWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 (specify) Transferred from another district ☐ 6 Multi district Litigation ☐ 7 Judge from District Magistrate Appeal to District

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 U.S.C.A. 1331 and 28 U.S.C.A. 1332(a)(1)

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

\$DEMAND

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) instructions): IF ANY**

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

7/14/05

(P. 31332)

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes
☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :

